

## REMARKS

Claims 1-42 are pending in the application. Claims 1-16, 23-36, and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Saias (U.S. Patent Application Publication No. 2003/0014379) in view of Kane (U.S. Patent No. 6,317,728). Claims 17-22, 37-39, and 41-42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Saias. Claims 1, 17, 18, 23, and 37 have been amended.

Applicant has carefully considered the cited art and the comments provided in the Office Action mailed June 20, 2007. As will be discussed in greater detail below, the claim rejections are misplaced and should be withdrawn. Allowance of the application is requested.

### Interview Summary

Prior to discussing the Office Action and the patentability of the claims, the undersigned counsel wishes to thank Examiner Oyeibisi for the time and consideration he extended in a personal interview conducted October 18, 2007. In summary, the interview focused on proposed amendments to the claims and the patentability of the claims over the cited art (Saias and Kane). At the conclusion of the interview, applicant agreed to formally submit the present amendment.

### Claims 1-16, 23-36, and 40 Are Patentable Over Saias and Kane

Claim 1 recites a method of facilitating trading that includes:

- automatically capturing a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the market participants, and wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller,
- automatically determining, by a software process executing on a computer, whether each of the market participants has gained money or lost money from the trade in which they engaged, and

- automatically updating, by the software process, a preference rating for each of the market participants based on the determination of whether money was gained or lost from the trade, wherein the preference rating for each market participant is descriptive of the market participant as a trading party.

The Office Action (pages 5 and 6) acknowledged that Saias fails to disclose all of the elements of Claim 1. The Office Action thereafter relied on Kane as overcoming the deficiency of disclosure in Saias. As discussed with the Examiner in the interview, Kane, along with Saias, fails to disclose the elements of Claim 1, whether considered alone or in combination with Saias.

Kane discloses a computerized system with "agents" that provide trading *suggestions* to a trader to help the trader make a decision whether to enter into a trade. Depending on available information, the agents make a buy or sell suggestion to the trader based on the respective rules that they represent (see Col. 5, lines 5-15, of Kane). A suggestion from each agent is considered to be a vote (see Col. 5, lines 37-48). Depending on the outcome of the votes from the various agents, the trader may decide to create and send an order to a marketplace (see Col. 5, lines 49-55).

Notably, *the agents disclosed by Kane are not "market participants."* As recited in Claim 1, the market participants "are each parties to the trade." The trade "results in an exchange of items between the market participants." Furthermore, "one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller."

The agents taught by Kane are not parties to the trade nor do they enter into trades. The agents only advise a trader, or market participant, on one side of a trade whether to enter into a trade and what position to take in the trade.

Furthermore, Kane's system only keeps track of its own side (buy or sell) of a trade. Each trader only knows whether its own side has gained or lost money from the trade; there is no tracking of whether the contra side of the trade gained or lost money from the trade.

Accordingly, Kane does not teach "automatically determining . . . whether each of the market participants has gained money or lost money from the trade in which they engaged."

To the extent a trader using Kane's system, at the conclusion of the trade, updates merit quotients to rate its own agents (according to the agents' prior recommendations to buy or sell), these merit quotients are not "preference rating[s] for each of the market participants" as recited in Claim 1.

As further recited in Claim 1, "the preference rating for each market participant is descriptive of the market participant as a trading party." Accordingly, it must be acknowledged that the preference rating is directed to *who* is involved in a trade, not *what* is being traded.

Since Kane and Saias both individually and collectively fail to teach or suggest all of the elements of Claim 1, there is no combination of Kane and Saias that renders Claim 1 obvious. Claim 1 should be allowed.

Claims 2-16, which incorporate all the features of Claim 1 by dependence, are also patentable over Saias and Kane. Each of these dependent claims is further distinguished over Kane and Saias for the additional subject matter they recite and should be allowed.

Claim 23 recites a system for facilitating trading that includes:

- a computer having a processing component configured to automatically capture a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the market participants, and wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade,
- wherein the processing component is further configured to automatically determine whether each of the market participants, as a party to the trade, has gained money or lost money from the trade and to automatically update a preference rating for each of the market participants based on the determination

of whether money was gained or lost from the trade, the preference rating for each market participant being descriptive of the market participant as a trading party.

Applicant has considered the disclosures of Saias and Kane and respectfully submit that neither Saias nor Kane (alone or combined) teaches the system recited in Claim 23, particularly in view of the comments provided above relative to Claim 1. Claim 23 should be allowed.

Claims 24-36, which incorporate all the features of Claim 23 by dependence, are also patentable over Saias and Kane. Furthermore, each of these dependent claims is patentably distinguished over Kane and Saias for the additional subject matter they recite. Claims 24-36 should be allowed.

Claim 40 is dependent on Claim 37 and thus incorporates all of the elements of Claim 37. For this reason, and for the additional subject matter it recites ("the executable instructions further cause the computer to determine whether the first or second market participant gained money or lost money from the trade and to provide said determination as information to the preference rating updating process"), Claim 40 should be allowed.

#### Claims 17-22, 37-39, and 41-42 Are Patentable Over Saias

The Office Action (page 2) rejected Claims 17-22, 37-39, and 41-42 as being anticipated by Saias. Applicant strongly disagrees.

Claim 17 recites, in part, a method of "facilitating a trade between the first trading process and a second trading process, wherein the *second trading process* is unaware of the identity of the first trading process and yet *is able to obtain, from the market process, a preference rating for the first trading process.*" Saias explicitly teaches away from this claim element.

To understand this point, applicant reiterates it is first necessary to understand that the trading terms, or "preferences," of Saias are directed to what is being traded, not to who is on the other side of the trade. Each of the parties can submit terms to be negotiated in order to make a trade. Saias' trading terms are characteristics describing the trade, such as price and quantity; the

trading terms are not "a preference rating for the first trading process," as claimed in Claim 17, "wherein the preference rating is descriptive of the first trading process as a trading party."

Furthermore, according to Saia, the trading terms form multi-dimensional preference surfaces (see paragraph [0320]), which are not disclosed to the other party in the trade. As noted in paragraph [0317] (repeated in the Office Action at pages 12-13), Saia teaches "*none of the surfaces will be available for inspection or analysis by any other market participant, or any third party.*" This is not what is taught and claimed in Claim 17. Quite differently, in Claim 17, the second trading process (as a market participant) "is able to obtain, from the market process, a preference rating for the first trading process."

Since Saia fails to teach or suggest all of the elements of Claim 17, Saia does not anticipate Claim 17. Claim 17 should thus be allowed.

Claim 18 recites a method of facilitating trading that includes:

- automatically providing information to a preference rating updating process, and
- automatically deciding, by a software process executing on a computer, the software process being a first market participant, whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party,
- wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants.

Saia fails to teach or suggest a preference rating updating process, as claimed in Claim 18. Saia also does not teach or suggest a software process (first market participant) that decides whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, wherein the

preference rating is descriptive of the second market participant as a trading party and wherein the trade results in an exchange of items between the market participants.

With respect to Claim 18, the Office Action cited paragraphs [0310]-[0311], as well as paragraphs [0317]-[0318], but these passages teach nothing about a first market participant deciding whether to trade with a second market participant based on a preference rating of the second market participant. In fact, Saias teaches the contrary. The automated market (AM 108) taught by Saias receives trading terms from different parties and arranges trades while keeping information about the parties private. In the present application, the first market participant is *g* the preference rating (which is "descriptive of the second market participant as a trading party") so that first market participant can determine whether to trade with the second market participant based on the preference rating. Thus, in the present application, the preference rating in Claim 18 is directed to *who* is involved in a trade, rather than *what* is being traded. On the other hand, at paragraph [0318], Saias explains that the preferences are terms for negotiation and include price, quantity, and other characteristics based on *what* is being traded. Importantly, according to Saias, *preference information obtained from one market participant is not shared with any other market participant*, which is different than what is taught and claimed in Claim 18.

Claim 18 is patentably distinguished over Saias and should be allowed. Claims 19-22, which depend from Claim 18, incorporate all of the features of Claim 18. Accordingly, each of these dependent claims is patentably distinguished over Saias for the reasons discussed above. Claims 19-22 also present additional subject matter that defines the claims over Saias. Claims 19-22 should also be allowed.

Claim 37 recites a computer-accessible medium having executable instructions stored thereon that, when executed, cause a computer to:

- automatically provide information to a preference rating updating process, and
- automatically decide, as a first market participant, whether to trade with a second market participant based on a preference rating of the second market participant

determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party,

- wherein one of the first and second market participants is a buyer in the trade and the other of the first and second market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants.

Neither Saias nor Kane, alone or combined, teaches the system recited in Claim 37, particularly in view of the comments provided above. Claim 37 should be allowed.

Claims 38-42, which incorporate all the features of Claim 37 by dependence, are also patentable over Saias and Kane. Moreover, each of these dependent claims is patentably distinguished over Kane and Saias for the additional subject matter they recite. Claims 38-42 should thus be allowed.

#### CONCLUSION

Claim 1-42 are all in allowable condition. A notice to that effect at an early date is requested. Should any issues remain needing resolution prior to allowance, the Examiner is invited to directly contact the undersigned counsel to discuss these issues.

Respectfully submitted,

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